EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 30, 1979

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Guidelines for the Conduct of Matching Programs

This memorandum forwards guidelines for computer matching of personal records by Federal executive agencies. These guidelines are being issued by OMB to aid agencies in balancing the government's need to maintain the integrity of Federal programs with the need to protect an individual's right to privacy. They are not intended to authorize the performance of matching programs, but rather to provide guidance for matching programs which are otherwise justified.

In August 1978 a draft of the guidelines was issued for agency and public comment. Major changes made as a result of the comments received include:

- The guidelines have been extensively restructured and reworded to answer many questions of interpretation which were raised.

- The requirements for agency reporting on matching programs which involve periodic matching of the same kinds of personal records and matching programs for purposes other than curtailing fraud in assistance programs have been simplified to reduce the reporting burden while preserving the opportunity for public comment.

- Criteria for the use of contractors in the conduct of matching programs have been substituted for the stringent limitations on the use of contractors included in the earlier draft.

Any questions regarding these guidelines may be directed to the Information Systems Policy Division (395-3785).

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Director

Enclosure

Matching Guidelines

1. Purpose - This document is a supplement to the "OMB Guidelines on the Administration of the Privacy Act of 1974," issued on July 1, 1975 and supplemented on November 21, 1975. It provides guidance to Federal agencies for computerized matching of individuals' records. These guidelines are intended to aid agencies in balancing the government's need to maintain the integrity of Federal programs with the individual's right to personal privacy. These guidelines do not authorize activities which are not permitted by law; nor do they prohibit activities expressly required to be performed by law. The procedures and limitations set forth in these guidelines apply, even when a statute authorizes or requires a matching program to be carried out, to the extent that these procedures and limitations would not frustrate the legislative purposes of that statute. Compliance with these guidelines does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited in these guidelines.

2. Scope - These guidelines apply to all agencies subject to the Privacy Act of 1974 and to all matching programs:

   a. Performed by a Federal agency, whether the records used in the match are Federal or non-Federal, or

   b. For which a Federal agency discloses any records for use in a matching program performed by any other Federal agency or any non-Federal organization.

3. Effective date - These guidelines are effective upon the date of their issuance.

4. Definitions

   a. All definitions in the Privacy Act and OMB Circular No. A-108 apply to these guidelines.

   b. A "personal record" means any information pertaining to an individual, stored in a computer system which is retrieved by his or her name or other personal identifier.

   c. A "matching program" is a procedure involving the use of a computer to compare a substantial number of records in a Federal system of records with records in one or more other systems of records, or with a set of non-Federal personal records, for the purpose of

identifying individuals whose records appear in more than one of the systems of records or sets of personal records compared. The procedure includes all steps associated with the match, including the acquisition of the records to be matched, the actual use of the computer, and the disposition of information maintained in connection with the match. Checks on specific individuals to verify information provided in an application for benefits, or checks on specific individuals based on information which raises questions concerning the individual's eligibility for benefits which are made reasonably contemporaneously with the application or receipt of the information, are not considered matching programs, regardless of the number of checks made at the same time or that computers are used in making such checks. Matching programs do not include matches performed for the purpose of producing aggregate statistical data which is subsequently used without individual identifiers.

d. An "anti-fraud matching program" is a matching program performed for the purpose of detecting or curtailing fraud or abuse in a Federal assistance program, or for the collection of delinquent loan or benefit payments owed to the Federal Government.

e. A "matching agency" is the agency which performs or seeks to perform, a matching program.

f. A "matching source" is the agency which discloses records to a matching agency for a matching program.

g. A "hit" is the identification, through a matching program, of a specific individual.

h. The "Act" means the Privacy Act of 1974 (Section 3 of Public Law 93-579, 5 U.S.C. 552a).

5. Guidelines for Agencies Conducting Anti-fraud Matching Programs - Agencies which conducy anti-fraud matching programs using personal records from any other Federal agency, or from a non-Federal organization, should conduct those matching programs in accordance with the provisions of this section.

a. Development of matching programs - A matching program should be undertaken only if a demonstrable financial benefit can be realized which significantly outweighs the costs of the match and any potential harm to individuals

that could be caused by the matching program, e.g., public disclosure of information about an individual or improper termination of a benefit. The matching agency should consider alternative means of detecting or curtailing fraud and abuse or collecting debts owed to the Federal Government, and should undertake a matching program only if the alternatives are less effective, more expensive or would present a greater threat to personal privacy. An analysis of the benefits, costs, potential harm, and alternatives considered should be prepared and documented by the agency proposing to conduct the match. This analysis should, as a minimum, include:

(1) Estimated losses resulting from fraud, abuse, error, or loan defaults.

(2) Estimates of the number of individuals who are receiving or have received benefits for which they are ineligible, or who have defaulted on loans.

(3) The amount which could potentially be recovered or saved by identification of those individuals and the termination of improper payments or the collection of delinquent debts.

(4) Potential savings which could be achieved through deterrence of ineligible applicants or through other improvements in the program management (e.g., reduced error rates), based on the matching program.

(5) Estimates of reimbursement costs to be paid to the matching source for the acquisition of records for the matching programs.

(6) Estimates of any cost involved in the actual matching itself, including costs of planning the match, time or effort necessary to make the sets of personal records compatible and the computer time required for the match.

(7) Estimated costs of follow-up on individual "hits," including verification of individuals' records, locating the individuals, any planned counseling of those individuals, collection efforts, and litigation.

(8) An assessment of the extent to which the conduct of the matching program could discourage individuals from exercising their rights.

(9) An analysis of alternative means for curtailing fraud that were considered and rejected, including a full description of the reasons why they were not considered viable alternatives to conducting a matching program.

b. Matching reports - The matching agency should submit a report describing the proposed matching program, consistent with the provisions of this section, to the Director of OMB, the Speaker of the House of Representatives, and the President of the Senate 60 days before a matching program is initiated. If the matching program will involve or result in the establishment or significant alteration of a system of records subject to the Privacy Act, the matching report should be submitted as a part of a Report on New or Altered Systems as required by OMB Circular No. A-108, as amended. If the records to be disclosed by the matching source are to be "maintained" (as defined in subsection (a)(3) of the Privacy Act), by the matching agency, the matching agency must publish a system notice for those records. In addition, the records on "hits" may constitute a system for which a system notice must be published. The advance notice period may be waived by OMB in the same manner as provided in OMB Circular No. A-108. In those cases where the agency determines that compliance with these guidelines would frustrate the purpose of a statute which requires matching of records, the matching report shall set forth the basis for the agency's determination and clearly identify those portions of the guidelines which would frustrate the statutory requirement.

(1) One time matching programs - For one time matching programs the report should include a copy of the agency's analysis of benefits, costs and potential harm prepared in accordance with 5.(a) above, and a description of the matching program, including--

(a) The starting and estimated completion dates of the program.

(b) A description of the personal records to be matched.

(c) The system name(s), date(s) and page(s) of the most recent publication in the Federal Register of system notices for systems used to perform the matching program. This includes systems of records maintained by both the matching agency and the matching source.

(d) The source(s) from which records will be obtained and a copy of the routine use or description of any other authority by which records will be disclosed.

(e) The procedures to be followed, both in the actual matching, and in following up on "hits."

(f) A discussion of how individuals' privacy and other rights will be protected, for example, limitations on the amount of information maintained, or on improper access to records.

(g) The safeguards to be applied in the design and operation of the matching program to protect against unauthorized access or disclosure of personal records, consistent with the requirements of OMB Circular No. A-71, Transmittal Memorandum No. 1 dated July 27, 1978.

(h) The kinds of records which will be disclosed as a result of the match and those to whom records will be disclosed, including the basis for any routine uses.

(i) The plans for disposal of records developed in connection with the conduct of the matching programs, including the records on "hits" and any additional information maintained on the "hits."

(j) An identification of all Federal and non-federal organizations (including contractors) involved in performing the match and the roles to be performed by each organization.

(2) Continuing matching programs - Continuing matching programs (e.g., a monthly or semi-annual match of recipients of a benefit against the Federal payroll, or a series of matches of the Federal payroll against similar personal records from several States) should be reported as follows:

(a) Initial report - In addition to the information required in one-time matching reports specified in 5(b)(1) above, the initial report for a continuing matching program shall include a discussion of the justification for performing periodic matches of the same kinds of records, an indication of how often the matches will be performed, and a discussion of the relationship, if any, between the periodic matches (e.g., whether new files of the "hits" are created and matched against earlier "hits," and the disposition of those records).

(b) Renewal report - The matching agency should submit a renewal report to OMB and the Congress annually for as long as the program continues. The renewal report should provide justification for continuing the matching program and an evaluation of the previous year's results. The renewal report should describe the results of the previous year's activity, including aggregate data on the number of "hits" in each match, the disposition of those cases, the cost to date of the program, the estimated amounts of money saved or recovered through the program, and the disposition of personal records, consistent with paragraph d.(3) below; and any changes to be made in the matching program as a result of the previous year's experience. The matching agency may submit an annual consolidated renewal report on all continuing matching programs subject to this section, provided that all matching programs initiated within the preceding 12 months are included.

(c) Change report - The matching agency should submit a revised matching report to OMB and the Congress 30 days before obtaining records from a new matching source, changing the kinds of records used, or the kinds of disclosures made. This report should include a description of the changes made and a copy of the initial report. If a system of records is established or significantly altered by the change, a Report on New or Altered Systems must be submitted 60 days before the system is established or altered.

c. Operating requirements - Anti-fraud matching programs should be conducted in accordance with the following guidelines:

(1) Use of contractors - Matching programs should, to the maximum extent practicable, be conducted "in-house" by Federal agencies, using agency personnel, rather than by contract. When contractors are used:

(a) The matching agency should, consistent with subsection (m) of the Act, cause the requirements of the Act to be applied to the contractor's performance of the matching program. The contract should include the Privacy Act clause required by FPR Amdt. 155, 41 CFR 1-1.337-5.

(b) The terms of the contract should include appropriate privacy and security provisions consistent with policies, regulations, standards and guidelines issued by OMB, GSA, and the Department of Commerce.

(c) The terms of the contract should preclude the contractor from using, copying, or retaining records associated with the matching program for the contractor's own use.

(d) The contractor personnel involved in the matching program should be explicitly made aware of their obligations under the Act, these guidelines, agency rules and any special safeguards in relation to each specific match performed.

(e) Disclosures of records by the agency to the contractor should be made pursuant to a routine use.

(2) Acquisition of records - The matching agency should not acquire records for use in a matching program other than in accordance with these guidelines. The matching agency should provide the matching source with any information necessary for the source to make an informed decision on the appropriateness of disclosing information for the proposed match. (See section 6.) As a minimum, the matching agency should provide the matching source with copies of the analysis of benefits, costs, potential harm and alternatives developed under 5.a above, and a written statement outlining the plans for the match, including:

(a) A description of the personal records to be disclosed by the source.

(b) A description of the personal records against which they will be matched.

(c) The dates when the records will be disclosed by the source and the dates when they will be returned to the source or destroyed.

(d) A description of additional information which may subsequently be requested of the source in relation to "hits," (e.g., detailed payroll information on "hits").

(e) Subsequent actions expected of the source (e.g., verification of the identity of the "hits" or follow-up with matching source employees who are "hits").

(f) The methodology to be used for allocation of any costs of conducting the matching program between the matching agency and the matching source, and any related understanding in regard to financing or transfer of resources in connection with the match.

(g) Any limitations on redisclosure of information provided to the matching agency by the matching source or to disclosure of any information provided to the matching source as a result of the match.

(3) Disclosure of matching program records - Disclosures of personal records which result from the matching program should be made only under the conditions specified in subsection (b) of the Privacy Act, the 1975 OMB Guidelines, and these guidelines, unless another statute specifically requires a disclosure which is not provided for in the Privacy Act. While subsection (b) of the Privacy Act establishes various conditions for disclosing records without the advance written consent of the subject, disclosures made in connection with a matching program should be made, to the extent possible, pursuant to the routine use provisions, as outlined in (a), below. Disclosures made pursuant to other provisions of subsection (b) of the Privacy Act, or pursuant to another statute, should be made as outlined (b), below. Disclosures of personal records maintained in connection with the matching program should disclose no more information than necessary, and should disclose information to as few recipients as possible. Disclosures should be made only as necessary to conduct or achieve the purpose of the matching program, and should be made only with the prior written approval of the matching agency official who is responsible for the system of records.

(a) Routine uses - The matching agency shall, consistent with subsection (e)(11) of the Act, publish in the Federal Register a notice describing any routine uses of personal records maintained in connection with the matching program. The description of the routine use should clearly indicate that it is associated with a matching program. In addition, the notice should explain the justification for the routine use, including how the disclosure is compatible with the purpose for which the information was collected, and indicate why the records cannot be disclosed without individual identifiers. After publishing the routine use notice in the Federal Register and allowing 30 days for public comment,

the matching agency should consider any comments which have been received, and revise the routine use as appropriate. After the expiration of the 30 day comment period, the routine use notice should be republished if it has been revised based on comments received. If the routine use is not revised because no comments were received or the comments did not warrant a revision, the matching agency should publish a short notice indicating that the routine use is adopted as originally published, and, if comments were received, indicating the basis for their rejection. The routine use may become effective (i.e., disclosures may be made) immediately following the initial 30-day comment period.

(b) Other disclosure - The matching agency should determine and give notice of any kinds of disclosures which it will make in relation to the matching program, other than those made pursuant to a routine use. The notice should be published in the Federal Register, outlining the conditions under which the disclosures will be made and the justification and legal authority for making those disclosures. This notice should be published prior to the conduct of the match and concurrent with the publication of any new or revised system notices or routine uses when applicable.

(4) Limitations on redisclosure - Whenever the matching agency discloses any records which result from a match program, including but not limited to those pertaining to "hits" which result from a matching program, the agency should as an express condition of the disclosure, provide a statement to the recipient which sets forth:

(a) The use to which the records will be put by the recipient.

(b) A stipulation that the recipient will disclose them further only where required by law or where (e.g., in the case of a law enforcement or administrative agency) such disclosure is compatible with the purpose for which the records were originally disclosed to the matching agency by the matching source.

(c) The date by which the records transferred will be destroyed or returned to the matching agency, or, if it is necessary that the records be retained by the recipient, a written explanation of why they are being retained.

d. Termination of matching programs and disposal of records

(1) Records obtained from the matching source - Personal records obtained from the matching source should be destroyed or returned to the source within six months after the match takes place. However, if the same system of records is used in a continuing matching program, it need not be returned or destroyed until 6 months after the final match takes place.

(2) Records of "hits" - Unless otherwise required by Federal records schedules, any records related to the "hits," including computer printouts listing the "hits" and any additional personal information compiled on the "hits," should be destroyed within six months after the match unless they are necessary for the completion of pending law enforcement or administrative activities consistent with the purposes of the matching program and authorized by law. Any extension of the six month period should be published, with appropriate explanation, in the Federal Register.

(3) Notification to OMB - The matching agency should notify OMB in writing of the completion of a one-time matching program and the destruction or return of the personal records to the matching source. Disposition of records associated with continuing matching programs should be reported to OMB as a part of the renewal report required by paragraph b(2)(b), above.

6. Guidelines for Matching Source Agencies Participating in Anti-fraud Matching Programs

a. Applicability. Disclosures of personal records to any other Federal agency or non-Federal organization for the purpose of anti-fraud matching programs shall be made in accordance with the provisions of subsection (b) of the Privacy Act, related portions of the 1975 OMB Guidelines, and provisions of this section.

b. 1975 OMB Guidelines. While the 1975 guidelines apply in their entirety, selected portions are restated below to stress matching source responsibilities regarding disclosure of personal records.

(1) The 1975 Guidelines pertaining to disclosures of records without the advance written consent of the subject provide that--

"Disclosure, however, is permissive not mandatory. An agency is authorized to disclose a record [without the

advance written consent of the individual to whom the information pertains] when it deems that disclosure to be appropriate and consistent with the letter and intent of the Act and these guidelines.

"Nothing in the Privacy Act should be interpreted to authorize or compel disclosures of records, not otherwise permitted or required, to anyone other than the individual to whom a record pertains pursuant to a request by the individual for access to it.

"Agencies shall not automatically disclose a record to someone other than the individual to whom it pertains simply because such a disclosure is permitted by this subsection. Agencies shall continue to abide by other constraints on their authority to disclose information to a third party including, where appropriate, the likely effect upon the individual of making that disclosure. Except as prescribed in subsection (d)(1), (individual access to records) the Act does not require disclosure of a record to anyone other than the individual to whom the record pertains." (emphasis added) (40 FR 28949, at 28953, July 9, 1975).

(2) The 1975 Guidelines pertaining to intra-agency transfers of information provide that--

"This provision (subsection (b)(1)) is based on a "need to know" concept... It is recognized that agency personnel require access to records to discharge their duties. In discussing the conditions of disclosure provision generally, the House Committee said that 'it is not the Committee's intent to impede the orderly conduct of government or delay services performed in the interests of the individual. Under the conditional disclosure provisions of the bill 'routine' transfers will be permitted without the necessity of prior written consent. A 'non-routine' transfer is generally one in which the personal information on an individual is used for a purpose other than originally intended." (House Report 93-1416, p. 12).

"This discussion suggests that some constraints on the transfer of records within the agency were intended irrespective of the definition of agency. Minimally, the recipient officer or employee must have an official "need to know." The language would also seem to imply that the use should be generally related to the purpose for which the record is maintained." (40 FR 28949 at 28954)

c. Matching source decision on participating in an anti-fraud matching program. When a Federal agency is asked to disclose personal records to another Federal agency or any non-Federal organization for the purpose of conducting an anti-fraud matching program, it should carefully review the information provided by the matching agency pursuant to paragraph 5c(2) and determine the appropriateness of disclosing the requested information for the proposed matching program. The review should include consideration of the authority for and purpose of the matching program, the appropriateness of disclosing the records for that purpose, the procedures to be followed, and any disclosures of the results of the matching program by the matching agency. The matching source may seek any additional information necessary to make an appropriate disclosure decision. The matching source should indicate in writing its concurrence with the matching agency's statement describing the matching program, as provided for in section 5c(2) of these guidelines.

d. Disclosure of records. While subsection (b) of the Privacy Act establishes various conditions for disclosing personal records without the advance written consent of the subject, disclosures of personal records by a matching source made for the purpose of conducting a matching program should only be made pursuant to the routine use provisions, as outlined below, unless otherwise required by statute. In those cases where the agency determines that establishment of a routine use would be contrary to other statutory requirements, it should publish a notice in the Federal Register outlining the statutory basis for the disclosure in lieu of publishing a routine use notice. In all other cases, the agency should publish a notice in the Federal Register describing routine uses associated with proposed matching program(s). The routine use notice should--

(1) Be as specific and limited as possible.

(2) Expressly state that the routine use is intended to permit the disclosure of records for a matching program.

(3) Identify the matching program.

(4) Set forth any conditions which the matching source has established for the use of the records by the matching agency in addition to those set forth in these guidelines.

(5) Include an explanation of how the disclosure is compatible with the purpose for which the records were collected or a citation of the statute requiring disclosure.

7. Guidelines for Conducting Other Matching Programs

a. Applicability - The reporting requirements of this section apply to--

(1) All matching programs conducted by a Federal agency for other than anti-fraud purposes, using personal records from any other Federal agency or from a non-Federal organization; and

(2) All matching programs conducted by a Federal agency which use only personal records maintained by that agency, except--

(a) Matches conducted for internal administrative purposes using personal records pertaining to agency employees and military personnel and their dependents and not conducted for the primary purpose of detecting fraud and abuse; or

(b) Matches conducted for research or statistical purposes which do not affect individual entitlements.

b. Reporting requirements - All matching programs subject to the provisions of this section should be reported to the Director of OMB, the Speaker of the House of Representatives and the President of the Senate as follows:

(1) Within 90 days of the effective date of these guidelines, the matching agency should submit a report to OMB and the Congress describing any matching programs in progress on the effective date, and plans, if any, for continuing these programs. Any current plans for initiating new matching programs within a year after the effective date of these guidelines should also be included in this report. The purpose of this report is to inform OMB and the Congresss of the magnitude and nature of matching programs being conducted or planned and determine the need for developing additional guidelines for matching programs. These matching programs need not be suspended before being reported. The report shall include, for each matching program--

(a) The name and purpose of the program.

(b) The authority under which it is to be conducted.

(c) The approximate dates on which the program will begin and end.

(d) A description of the personal records to be matched; and, if one or both are systems of records subject to the Act, the system name(s) and the date and page of most recent publication in the Federal Register.

(e) The procedures to be followed, including disposition of the records.

(2) A matching report shall be submitted to OMB and the Congress by the agency as soon as practicable before a match is performed for any one-time matching program or before the initial match of a continuing matching program which is not included in the report on matching programs submitted pursuant to paragraph b(1) above. The matching report should contain the information outlined in paragraph (b)(1) above.

(3) For any matching program which necessitates the establishment or significant alteration of a system of records subject to the Privacy Act, a Report on New or Altered Systems must be submitted 60 days before the initial match is performed, and any necessary system notices and routine uses must be published in the Federal Register.

(4) A Federal agency which discloses records to a non-Federal organization should report the disclosure to OMB. The report should describe the nature of the disclosure and the agency's basis for making the disclosure.

8. Implementation and oversight - The Office of Management and Budget will oversee the implementation of and shall review, interpret and advise upon agency proposals and actions under these guidelines, consistent with Section 6 of the Privacy Act.

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